

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.224 of 2019

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Sajjan Kumar Singhania @ Sajjan Kumar Singhaniya Son of Late Biharilal Singhaniya, Resident of Mohalla-Chunihari Tola East Kotwali P.O.-Head Post Office, Bhagalpur, P.S.-Kotwali, District-Bhagalpur, at Present running a Business in the name of Janta Vastralaya in Sujaganj, Bhagalpur, P.O.-Head Post Office, Bhagalpur, P.S.-Kotwali, District-Bhagalpur.

Defendant/ Petitioner

Versus

1. Md. Meraj Shakil Son of Late Md. Shakil and Shahnaz Shakil Resident of Muhalla-Tarapur, P.S.-Tatarpur (Kotwali) District-Bhagalpur.
2. Md. Meraj Shakil, Son of Late Md. Shakil and Shahnaz Shakil Resident of Muhalla-Tarapur, P.S.-Tatarpur (Kotwali) District-Bhagalpur.
3. Md. Majaz Shakil Son of Late Md. Shakil and Shahnaz Shakil Resident of Muhalla-Tarapur, P.S.-Tatarpur (Kotwali) District-Bhagalpur.
4. Kahkashan Shakil daughter of Late Md. Shakil and Shahnaz Shakil Resident of Muhalla-Tarapur, P.S.-Tatarpur (Kotwali) District-Bhagalpur.
5. Shabishtan Shakil daughter of Late Md. Shakil and Shahnaz Shakil Resident of Muhalla-Tarapur, P.S.-Tatarpur (Kotwali) District-Bhagalpur.
6. Gul-Afshan Shakil daughter of Late Md. Shakil and Shahnaz Shakil Resident of Muhalla-Tarapur, P.S.-Tatarpur (Kotwali) District-Bhagalpur.
7. Afsan Shakil, daughter of Late Md. Shakil and Shahnaz Shakil Resident of Muhalla-Tarapur, P.S.-Tatarpur (Kotwali) District-Bhagalpur.
8. Most Shahnaz Shakil, Widow of Late Md. Shakil, Resident of Muhalla-Tarapur, P.S.-Tatarpur (Kotwali) District-Bhagalpur.

... .. plaintiffs/Respondent/s

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Appearance :

For the Petitioner/s : Mr.Diwakar Upadhyaya
For the Respondent/s : Mr.Anjum Perveen

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CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV ORDER

13 03-09-2024 I have already heard the learned counsels for the parties.

2. This civil revision application has been preferred against the judgment/order dated 29.08.2019, passed in Title (Eviction) Suit No. 23 of 2009, passed by learned Munsif-1,



Bhagalpur, whereby the defendant/petitioner was directed to vacate the suit premises within sixty days from the date of the order and hand over the vacant premises to the plaintiffs otherwise the plaintiffs will be entitled to get the vacant possession of the suit premises through the process of the court.

3. Late Md. Shakil, hereinafter referred to as 'the plaintiff', was the father of the respondents herein. He brought a suit for eviction against Late Biharilal Singhaniya, father of the petitioner, hereinafter referred to as 'the defendant' for eviction of the tenanted premises let out to Late Biharilal Singhaniya. The brief fact of this case is that Late Biharilal Singhaniya was the tenant of the plaintiff on a monthly rent of the suit property, described in Schedule-A for ten years which ended on 27.03.1982. After expiry of the lease, the plaintiff filed a suit for eviction since the tenant refused to vacate the suit premises even after expiry of the lease. The ground of personal necessity was also taken in the pleadings. The suit was decreed and the defendant filed Title Eviction Appeal No. 04 of 1984. The appeal ended into compromise and 4 ft width of the shop room (the premises) was given to the plaintiff as per terms and conditions of the compromise. Again the registered deed of lease (*kirayanama* dated 02.04.1993) was executed by the



plaintiff in favour of the father of the petitioner for 15 years. After a lapse of 15 years, the lease deed became terminated on 31.03.2009. In spite of expiry of the lease deed, the defendant did not vacate the premises, despite persistent request made by the plaintiff. Having no option, the plaintiff sent pleader notice to the defendant on 10.02.2009, requesting him to give the possession of the premises. The notice was received to the defendant on 12.02.2009. On 04.04.2009, he refused to vacate the premises. It has also been pleaded that the plaintiff have three brothers and four sisters. Those four sisters were unmarried. The brothers were also unemployed. Except a small shop having four ft width, they had no source of income. The plaintiff(s) wanted to do some business by opening the shop, since the premises was in the main market (Sujaganj, Bhagalpur). Except these averments, the plea of default in payment of rent was also taken in the plaint. Hence the suit is on three grounds; (i) expiry of lease. (ii) personal necessity, and (iii) default in payment of rent.

4. According to the defendant, the suit was frivolous and baseless. A lease deed was executed by the plaintiff, much prior to the suit on 20.07.1966. On the ground of expiry of lease, the plaintiff had filed Eviction Suit No. 77 of 1982 which was



decreed in favour of the plaintiff. The defendant filed Eviction Appeal No. 04 of 1984 which ended into a compromise and four ft wide space was provided to the plaintiff for business. Again a lease was executed on 02.04.1993 for 15 years which expired on 31.03.2009. As per the terms and conditions of the lease deed, the defendant had to pay monthly rent to the plaintiff at the rate of Rs. 700/- per month on proper rent receipt. It has also been pleaded in the written statement that the plaintiff is running a shoe shop in the four ft wide space after being vacated by the defendant. It has been averred in the written statement that in stead of extending the period of lease after its expiration, the plaintiff(s) filed the present suit for eviction. The defendant also denied the plea of default made by the plaintiff in payment of rent.

5. Two documentary evidences have been given by the plaintiff in the trial court. Ext. 1 is the original registered deed of lease (*kirayanama* dated 02.04.1993) executed by Md. Shakil Ahmad in favour of Sajjan Kumar Singhaniya for 15 years and Ext.2 (pleader notice dated 09.02.2009). In spite of documentary evidence, six witnesses have been examined on behalf of the plaintiff, namely, P.W.1 Buland Akhtar, P.W.2 Md. Eqbal Hussain, P.W.3 Sayed Wakar Ahmad Jafari, P.W.4 Sunil



Mishra, P.W.5 Md. Meraj Shakil (respondent/plaintiff no.1) and P.W. 6 Md. Minhaj Shakil/ (respondent/plaintiff no.2).

6. No documentary evidence was adduced on behalf of the defendant, but one witness Murari Sharma was examined.

7. The learned counsel for the defendant/petitioner submitted that the learned trial court committed illegality, irregularity and impropriety in passing the order of eviction. As per the submission of the learned counsel, the partial eviction, as mandated by this Court in the case of *Anil Kumar and others Vs. Ram Autar Modi (S.A.No.80/2000)*, judgment and decree dated 17th December, 2013 should have been taken into account. It has also been argued that the plaintiffs/respondents have no personal necessity and after expiration of the deed dated 31.03.2009, the plaintiff(s) should have extended the period of lease or should have entered into a fresh agreement in respect thereto.

8. On the other hand, the learned counsel for the plaintiffs/respondents has submitted that the impugned judgment and decree does not suffer from any illegality which requires the revisional interference of this Court. He submitted that after expiry of the lease deed, the defendant has no authority to remain in the premises. He himself should have



vacated the premises, but he persistently evaded to do so and having no option, the pleader notice dated 09.02.2009 (Ext.2) was given to the defendant. It has also been submitted that the witnesses examined on behalf of the plaintiffs/respondents have proved their personal necessity. The suit premises is a shop situated in Sujaganj Market, Bhagalpur and the shop is suitable for business. They have no other means of income, except the four ft wide shop in which they were running a shoe shop.

9. After hearing both the parties and after giving thoughtful consideration to the materials available on the record, it appears that it is an admitted fact that a lease deed was entered into between the parties on 02.04.1993 on a monthly rent of Rs. 700/-. The period of lease was for 15 years commencing from 01.04.1993 and ending on 31.03.2009.

10. It is not in dispute that on 31.03.2009, the lease was terminated. It was also one of the terms of the lease that on expiration of the lease, the status of the tenant would be that of an unauthorized occupant and for each day's default in vacating the premises, the defendant shall have to pay a damages @ Rs. 30/- per day. After expiration of the lease, the defendant had no right to remain in the premises and the learned court below did not commit any illegality in passing the decree of eviction on



that ground.

11. The plea of personal necessity has also been pleaded in the plaint. As per the averments in the plaint, the plaintiffs had three brothers and four sisters and they(brothers) were unemployed. They had no means of income, except four ft wide shoe shop. The petitioner is running Janta Vastralaya in the suit premises, which is suitable for running the business by the plaintiffs/respondents for earning their livelihood. In my view, the ground of personal necessary of the plaintiffs/respondents has also been proved.

12. So far as the ground of default in payment of rent is concerned, it is apparent that vide order dated 21.08.2019, an order was passed by the court below to struck off the defense of the defendant under the provision of Section 15 of the Bihar Building (Lease, Rent and Eviction) Control Act,1982, which shows that he is a defaulter in making payment of rent. The defendant did not produce any evidence to show that he has paid the rent to the plaintiffs/respondents from the month of February, 2019, till the date of decree i.e. 29.08.2019.

13. So far as the ground of partial eviction of the premises is concerned, it is an admitted fact that the partial eviction was already made in pursuance of the compromise



decree passed in Eviction Appeal No. 04 of 1984. Once the partial eviction has already been made, much prior to filing of the suit, in my view, again the ground of partial eviction in the subsequent suit is not necessary.

14. In my view, the learned court below did not commit illegality in passing the judgment and decree of eviction.

15. On the basis of above-noted observations, this civil revision application stands dismissed.

(Nawneet Kumar Pandey, J)

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